

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ROBERT L. JONES,

Case No. 3:13-cv-085

Petitioner,

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

EARNIE MOORE, Warden,
Lebanon Correctional Institution,

Respondent.

**ORDER WITHDRAWING REPORT AND RECOMMENDATIONS
AND ORDERING ANSWER**

This habeas corpus case is before the Court on Petitioner's Objections (Doc. No. 5) to the Magistrate Judge's Report and Recommendations (Doc. No. 3) recommending dismissal under Rule 4 of the Rules Governing § 2254 Cases. Judge Rose has recommitted the case for reconsideration in light of the Objections (Recommittal Order, Doc. No. 5).

Upon reconsideration, the Report (Doc. No. 3) is WITHDRAWN. Petitioner objects strongly to dismissal under Rule 4, citing cases from other circuits which, he believes, call that practice into question. Without analyzing those cases further to determine their applicability in the Sixth Circuit or to the facts of this particular case, the Court agrees that it is appropriate to have the full trial transcript when determining a weight or sufficiency of the evidence claim, even though the state court determinations of those claims will be entitled to deference under 28 U.S.C. § 2254(d)(1).

Accordingly, it is hereby ORDERED that Respondent shall, not later than August 13,

2013, file an answer conforming to the requirements of Rule 5 of the Rules Governing §2254 Cases. Specifically, said answer shall respond to each allegation made in the Petition, raise any affirmative defense relied on by Respondent, and state whether, from Respondent's perspective, any claim in the Petition is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of limitations.

Before filing the answer, the Respondent shall file those portions of the state court record needed to adjudicate this case, accompanied by an index of the documents in the record. When the record is filed electronically, the Court's CM/ECF filing system will affix a unique PageID number to each page of the record, displayed in the upper right-hand corner of the page. All papers filed in the case thereafter, by either party, including the answer and the exhibit index, shall include record references to the PageID number. Prior to filing the state court record, the Warden's counsel shall ensure that any borders on parts of the record (typically, court reporter transcripts) do not obscure the PageID number when the page is filed. As required by Fed. R. Civ. P. 5, a complete copy of the answer and state court record with the PageID numbers must be served on Petitioner at the time of filing.

Petitioner may, not later than twenty-one days after the answer is filed, file and serve a reply to the answer.

The Clerk is ordered to serve the Petition on Respondent and the Attorney General of Ohio, c/o Assistant Attorney General M. Scott Criss, Sections Coordinator, 150 E. Gay Street, 16th Floor, Columbus, Ohio 43215.

June 13, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge

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